IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 1592 of 1999

Date of decision: 21.8.2006

Balwant Singh and anr …Petitioners

Versus

State of Punjab and others …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr Arun Jindal, Advocate for the petitioners.
Ms Charu Tuli, Sr DAG Punjab for respondents-1 to 3.
Mr SC Pathela, Advocate, for respondents-4 to 6.
Mr RL Gupta, Advocate, for respondents-7.

S.S. SARON, J.

Petitioners-1 and 3 to 7 and the husband of petitioner-2 (who has since died) retired from the various Municipal Councils/Corporations before 1.4.1995. The respondents have issued instructions vide letter dated 13.12.1996 (Annexure P4) in pursuance of which, it has been decided that dearness allowance as admissible to the employees as on 1.7.1993 (linked to All India Consumer Price Index level 1201.66) as indicated in the said letter, shall be treated as dearness pay for reckoning emoluments for the purposes of retirement gratuity and death gratuity under the Punjab Civil Service Rules Volume – II in the case of Punjab Government employees who retired or whose death occurs on or after 1.4.1995. The services of the petitioners, it is stated, are governed by the Punjab Municipal Pension and General Provident Fund Rules 1994 and in terms of the said Rules, gratuity is to be paid under the Punjab Civil Services Rules Volume – II. Besides,

vide letter dated 11.3.1996 (Annexure P3) the State Government has clarified that vide memo dated 31.5.1995 gratuity to all employees of the Municipal Councils, Municipal Corporations and Town Improvement Trusts in the State is to be paid out of Municipal Fund/Corporation Fund/Trust Fund, according to Punjab Civil Services Rules. In terms of the letter dated 13.12.1996 (Annexure P4) by treating the dearness allowance as linked to all India Consumer Price Index Level 1201.66 as dearness pay for reckoning emoluments for the purpose of computing retirement gratuity and death gratuity the ceiling limit on gratuity stands raised to Rs 2.50 lacs, which for those who retired or had died before 1.4.1995 was Rs one lac without adding any part of dearness allowance or dearness pay. The petitioners in this petition under Articles 226/227 of the Constitution of India seek quashing the cut off date - 1.4.1995 granting retirement gratuity/death-cum-retirement gratuity to the employees who have retired/died on or after 1.4.1995 by treating the dearness allowance admissible to employees as on 1.7.1993 (linked to All India Consumer Price Index Level 1201.66) as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity and denying the same to the pre 1.4.1995 retirees or those who have died earlier to the said date. Reliance is placed on the judgment of a Division Bench of this Court in ***Kartar Singh and ors v. State of Punjab*** 1998(2) RSJ 640.

In the written statement that has been filed, the claim of the petitioners is denied in view of the judgment of the Supreme court in ***State of Punjab v. Boota Singh*** (2000) 3 SCC 733.

We have heard learned counsel appearing for the parties.

The grievance of the petitioners is regarding providing of a cut off date - 1.4.1995 whereby those employees who have retired or would

retire or have died after the said date would get higher amount of gratuity by treating dearness allowance as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity and denying it to those who have retired and/or died earlier to the said date. It is not in dispute that petitioners No.1,3 to 7 have retired from service earlier to the cut off date. The husband of petitioner No.2 died earlier to the said cut off date. Therefore, the question that requires consideration is whether the petitioners – 1 and 3 to 7, who have retired from service and husband of petitioner – 2, who died before 1.4.1995 would be entitled to claim enhanced gratuity in terms of the letter dated 13.12.1996 (Annexure P4) and thereby entitled to the grant of difference between the gratuity that has already been paid and the enhanced gratuity as is payable to the post 1.4.1995 retirees. Besides, whether the dearness allowance linked to all India Consumer Price Index 1201.66 as indicated in the said letter dated 13.12.1996 (Annexure P4) can be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity even in respect of the pre 1.4.1995 retirees and also those who have died earlier to the said date.

The Supreme Court in various decisions has held that gratuity is a one time payment and once it has been paid, the transaction is completed and closed and the same cannot be re-opened at a later date. In D.S. Nakara v. Union of India AIR 1983 SC 130 even though it was held that the benefit of liberalisation pension and the extent thereof given in accordance with the liberalised pension scheme is to be given equally to all retirees irrespective of the date of retirement and the benefits were not to be confined to the persons who retired on or after a specified date, however, this, it was held, would not be applicable in the case of retirees who at the time of their retirement were entitled to provident fund and/or gratuity only.

This has been further explained by the Supreme Court in State Government Pensioners' Association v. State of Andhra Pradesh AIR 1986 SC 1907 wherein while holding that provisions which provided for payment of larger amount of gratuity with prospective effect from a specified date does not offend Article 14 of the Constitution, it was observed that it cannot be said that no upward revision of gratuity amount can be made in harmony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired. A reference was made to D.S. Nakara's case (supra) and it was observed as follows:-

> "In our opinion, the arrears relating to gratuity benefit computed according to the Revised Pension Rules of 1980 may not be paid to the pensioners that retired prior to 1.4.1978 because at the time of retirement they were governed by the then existing Rules and their gratuity was calculated on that basis. The same was paid. Since the revised scheme is operative from the date mentioned in the scheme, i.e. 1.4.1978, the continuing rights of the pensioners to receive pension and family pension must also be revised according to that scheme. But the same cannot be said with regard to gratuity, which was accrued and drawn." ....(Emphasis added)

In Union of India v. All India Services Pensioners' Association AIR 1988 SC 501 in respect of members of All India Services who had retired prior to 1.1.1973 were held not to be entitled to payment of gratuity as part of the retirement benefits as specified in the notification dated 24.1.1975. It was held that the decision in D.S. Nakara's case (supra) was not applicable to the payment of gratuity. The distinction between provident fund retirees and pension retirees was also considered in Krishena Kumar

and others v. Union of India AIR 1990 SC 1782 wherein after examining the case of D.S. Nakara (supra), it was observed that these retirees constituted different class and "it was never held in Nakara that pension retirees and P.F. retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible." It was, however, further observed that:-

> "In Nakara, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible."

In Indian Ex-Services League and others v. Union of India AIR 1991 SC 1182 a five judges Bench of the Supreme Court again reiterated that the claim for gratuity can be made only on the date of retirement on the basis of the salary drawn on that date and being already paid on that footing, the transaction was completed and closed. It could then not be re-opened as a result of the enhancement made at a later date for persons retiring subsequently. This concept of gratuity, it was observed, was different from pension and had also been considered in Krishena Kumar v. Union of India (supra).

The Hon'ble Supreme Court, therefore, has made a distinction between pension payable on retirement and the gratuity payable on retirement and it has been observed that while pension is payable periodically as long as the pensioner is alive, the gratuity is ordinarily paid only once on retirement. Therefore, the claim of the petitioners for grant of enhanced gratuity is clearly not sustainable.

The case of Indian Ex-Services League v. Union of India (supra) may also be adverted to insofar as the claim of the petitioners for the dearness allowance sanctioned upto all India Consumer Price Index 1201.66 can be treated as dearness pay for reckoning emoluments for the purpose of computing retirement gratuity and death gratuity. In this respect, it was observed by the Supreme Court as follows:-

> "Another claim made is for merger of D.A. backwards also. From 1.1.1973 everyone is being paid D.A. in addition to the pension. The reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement and, therefore, there is no ground to include D.A. at a time when it was not paid. This claim also is untenable."

In Union of India v. P.N. Menon and others AIR 1994 SC 2221 a memorandum issued by the Government had evolved the concept of treating a portion of the dearness allowance as pay in respect of officers in different pay ranges fixing different percentage of amount of dearness pay for the purpose of retirement benefits. The scheme to merge a part of the dearness allowance for the purpose of fixing dearness pay was linked with the average cost of living index fixed at 272 which fell on 30.4.1977. An option was given to the employees who retired on or after 30.9.1977 but not later than 30.4.1979 to get their pension and death-cum-retirement gratuity calculated by excluding the element of dearness pay or to get it included in their pension and death-cum-retirement gratuity. The said action was challenged by retired government servants questioning the validity of the office memorandum treating a portion of dearness amount as pay for the purpose of retirement benefits in respect of those government servants who

retired on or after 30.9.1977. The employees therein had retired before the said date and it was claimed that the said benefits should have been extended to all retired government servants irrespective of the date of superannuation. It was held that the specified date for grant of extension of the benefits was not picked out in an arbitrary or irrational manner or without application of mind and was not an exercise to create a class within a class. Therefore, when a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. In ***State of Punjab and ors v. Amar Nath Goyal and ors*** (2005)6 SCC 754, a similar controversy was considered. The Central Government issued an OM dated 14.7.1995 whereby dearness allowance linked to the All India Consumer Price Index 1201.66 (as on 1.7.1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity under the Central Civil Services (Pension) Rules 1972. The said benefit was actually made available to the employees who retired or died on or after 1.4.1995 i.e. the cut-off date. A large number of employees, both of the Central Government as well as the State Governments of Punjab and Himachal Pradesh, who had retired prior to 1.4.1995, applied for getting the additional benefits of increased quantum of death-cum-retirement gratuity up to the increased limit of Rs 2.5 lakhs. Their claims were rejected in some cases and in other cases CAT and the High Court took the view that such of the employees who had retired between 1.7.1993 and 31.3.1995 were also eligible for the aforesaid benefits. The employees whose cases were wholly rejected or partly rejected and partly granted, as well as the Union of India and the State Governments preferred appeal before the Supreme Court. The employees argued that there was violation of Article 14 of the Constitution.

They contended that the decision of the Central Government/State Governments to make available the increased quantum of gratuity (with revised ceiling) only to employees, who retired or died on or after 1.4.1995, was discriminatory and arbitrary. They also contended that all retirees/dead persons form a homogeneous class and any discrimination or distinction between retirees/dead persons prior to 1.4.1995 and those who retired/died on or after 1.4.1995 had no rational basis, nor was intended to serve any purpose. The said contention was rejected by the Supreme Court. It was held that it is difficult to accede to the argument that a decision of the Central Government/State Governments to limit the benefits only to employees, who retired or died on or after 1.4.1995, after calculating the financial implications thereon, was either irrational or arbitrary. It was further observed as under:-

> "Although, dearness allowance linked to the All India Consumer Price Index 1201.66 (as on 1.7.1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity, the benefit was actually made available to the employees who retired or died on or after 1.4.1995. Similarly, the increase in the ceiling of gratuity was a mere consequential step, which was also made applicable from 1.4.1995. As we have already noticed, 1.4.1995 was the date suggested by the Fifth Central Pay Commission ("Pay Commission") in its interim Report. The Central Government took a conscious stand that the consequential financial burden would be unbearable. It, therefore, chose to taper down the financial burden by making the benefits available only from 1.4.1995. It is trite that the

final recommendations of the Pay Commission were not *ipso facto* binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterized as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution."

The petitioners in the case in hand have primarily based their claim on a judgment of this Court in Kartar Singh v. State of Punjab (supra). In the said case, the petitioners therein were employees of the Punjab Government and had retired from service before 31.3.1985 on attaining the age of superannuation. The State of Punjab had allowed additional pensionary benefits and other benefits to those employees who retired from service on or after 31.3.1985. The said cut-off date was assailed and was quashed by this Court. The said judgment in Kartar Singh's case (supra) in fact is based on the judgment passed in the case of ***Dr Asa Singh v. State of Punjab*** CWP 14763 of 1990 which was allowed on 22.4.1991. The State of Punjab filed LPA 756 of 1991 in Dr Asa Singh's case (supra) which was dismissed on 25.11.1992. The SLP filed in the Supreme Court of India was also dismissed. It is mentioned in Kartar Singh's case (supra) that after dismissal of the SLP, the State Government filed C.M. No.1728 of 1993 in this Court seeking review of the order dated 25.11.1992 in LPA No.756 of 1991 (State of Punjab v. Dr. Asa Singh) and this application too was dismissed on 20.5.1994 by a Division Bench by passing a speaking order. The State of Punjab again filed SLP in the Supreme Court limiting it to the question as to whether D.A. on the enhanced gratuity was also to be paid to those amongst the petitioners who had retired prior to 31.3.1985.

Special leave was granted but Civil Appeal No.6660 of 1994 arising therefrom was ultimately dismissed on 17.12.1996 by a speaking order with the observations that Dr. Asa Singh's case had attained finality with the dismissal of SLP, the point in issue stood concluded and could not be re-agitated through an application filed in the Supreme Court. Therefore, the contention of the petitioners herein is that in view of the judgment in Kartar Singh's case (supra) wherein similar benefits had been granted to the employees of the Punjab Government who retired or died before 1.4.1985, the petitioners are also entitled to the same. It may, however, be noticed that the Supreme Court in the case titled State of Punjab and others v. Boota Singh and another (supra) considered a similar matter wherein this Court had granted relief to the retirees on the basis of a previous judgment passed in the case of Mohinder Singh v. State of Punjab, C.W.P. No.3921 of 1990, decided on 22.4.1991. In the said case the notification dated 9.7.1985 issued by the Punjab Government and which was considered in Dr. Asa Singh's case was noticed. In terms of the said notification it was decided that dearness allowance and ad hoc dearness allowance sanctioned upto Consumer Price Index Level 568 would be treated as dearness pay for the purpose of calculating pension, gratuity, death-cum-retirement gratuity and terminal gratuity in respect of the employees who retired on or after 31.3.1985. The retirees in ***Boota Singh's*** case (supra) had retired before the aforesaid date. This Court on the basis of judgment passed in Mohinder Singh v. State of Punjab (supra) granted the necessary relief. It was noticed in ***Boota Singh's*** case (supra) that the SLP in Dr. Asa Singh's case (supra) was dismissed by the Supreme Court on 13.5.1993 and that the State Government filed an interlocutory application before the High Court for clarification which was dismissed on 20.5.1994 and thereafter Civil Appeal

No.6660 of 1994 before the Supreme Court was also dismissed. On merits, it was, however, held that the retirement benefits which were claimed by the retirees were benefits which were conferred by subsequent orders/notifications. Therefore, the persons who had retired after coming into force the said notifications and order were governed by different rules of retirement than those who retired under the old rules and were governed by the old rules. The two categories of persons, who retired were governed by two different sets of rules. They could not, therefore, be equated. A reference was also made to the decision in Indian Ex-Services League v. Union of India (supra) and it was observed that the decision in Nakara's case (supra) had been distinguished and it was held that the ambit of that decision could not be enlarged to cover all claims by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement, even though the emoluments for the purpose of computation of pension are different. A reference was also made to the decision in the case of K.L. Rathee v. Union of India, (1997) 6 SCC 7, wherein it was held that Nakara's case (supra) cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. Accordingly, it was held that the respondents therein who had retired before the cut-off date were not entitled to the benefits which became available at a much later date to retire employees by reason of change in rules relating to pensionary benefits. The decision in Boota Singh's case (supra) was reiterated by the Supreme Court in State of Punjab and another v. J.L. Gupta and others, (2000) 3 SCC 736. The said case also related to ex-employees of the State of Punjab who were respondents in the appeal and they had retired from service prior to 31.3.1985. The same very notification dated 9.7.1985 issued by the State of Punjab whereby it was

inter alia decided that the dearness allowance and ad hoc dearness allowance sanctioned upto Consumer Price Index Level 568 would be treated as pay for the purpose of pensionary benefits in respect of employees who retired on or after 31.3.1985 was considered. The respondents therein were given the benefits by this Court on the basis of the decision in Dr. Asa Singh's case (supra). It was observed that the decision in the case of Dr. Asa Singh had been considered and explained in a later decision of the Supreme Court in Boota Singh's case (supra). The following observations of the Hon'ble Supreme Court are apposite:-

> The decision in the case of **Dr. Asa Singh** has been considered and explained in a later decision of this Court (**State of Punjab v. Boota Singh**). In this decision, it has been noticed that in **Dr. Asa Singh** case after the dismissal of the special leave petition on 13.5.1993, the State Government sought to reopen the matter by filing an interlocutory application before the High Court for clarification. The clarification application was dismissed by the High Court and the judgment of the High Court was upheld by this Court holding that since the main judgment had become final, the question could not be reagitated through the mode of interlocutory application for clarification. It was also noticed that the decision in **Dr. Asa Singh** case had no applicability and **Boota Singh** case could not be decided in the same fashion as **Dr. Asa Singh** case because the challenge in the appeal was to the main judgment of the High Court and not to any order passed on the clarification application.

In **Boota Singh** case it has also been held that the benefit conferred by the notification dated 9.7.1985 can be claimed by those who retire after the date stipulated in the notification and those who have retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old rules, i.e., the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implications and the specific date for the conferment of additional benefits cannot be considered arbitrary. It was further held that: (SCC p.735, para 8)

> "In the case of **Indian Ex-Services League v. Union of India** this Court distinguished the decision in **Nakara** case and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. We need not cite other subsequent decisions which have also distinguished **Nakara** case. The latest decision is in the case of **K.L. Rathee v. Union of India** where this Court, after referring to various judgments of this court, has held that **Nakara** case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. The respondents are not entitled to claim benefits which became available at a much later date to retiring

employees by reason of changes in the rules relating to pensionary benefits."

The controversy involved in the present appeal and connected appeals is squarely covered by the aforesaid decision. The respondents are thus not entitled to claim benefits under the notification dated 9.7.1985 since the said benefits became available on a much later date to the retiring employees by reason of change in the rules relating to pensionary benefits. In this view, the judgment of the " High Court cannot be sustained."

In view of the above judgments of the Hon'ble Supreme Court in Boota Singh's case and J.L. Gupta's case (supra), the claim of the petitioners based on the judgment in Kartar Singh's case (supra) which was decided in the light of Dr. Asa Singh's case is clearly misconceived and is not tenable. The petitioners having retired prior to 1.4.1985, therefore, are not entitled to the benefit of instructions dated 13.12.1996 (Annexure P4) which are applicable to those employees of the Punjab Government who retired on or after 1.4.1985. The claim of the petitioners, therefore, for treating the dearness allowance sanctioned upto all India Consumer Price Index 1201.66 as dearness pay in terms of instructions dated 13.12.1996 (Annexure P4) is also devoid of any merit.

For the foregoing reasons, there is no merit in this writ petition and the same is accordingly dismissed.

(S.S.NIJJAR)
JUDGE

21.8.2006.
ASR

(S.S.SARON)
JUDGE